

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

CHARLES REGGIE UNDERWOOD)
Petitioner,)
v.) Nos. 2:14-CR-089
United States of America) 2:15-CV-228
Respondent.)

MEMORANDUM AND ORDER

Petitioner has filed a motion asking that Claim IX (his failure to file an appeal claim) be dismissed “without prejudice” and that the evidentiary hearing set for 9:00 a.m., August 9, 2018, be cancelled. [Doc. 141]. Since that motion was filed, Petitioner has confirmed that he wishes to dismiss that claim even though it cannot be re-filed. [Docs. 142, 143].

Petitioner’s motion to dismiss Claim IX and to cancel the evidentiary hearing set for August 9 [doc. 141] is **GRANTED**. Claim IX, the “failure to file an appeal” claim, is **DISMISSED**. The evidentiary hearing set for August 9 is **CANCELED** and the referral to the magistrate judge is withdrawn.

The United States Marshals Service is advised that the previous order directing that Petitioner be transported to this district [Doc. 140] is **VACATED**. The clerk is directed to provide the United States Marshal with a copy of this order.

All claims raised by Petitioner in his § 2255 motion have now been addressed, and the motion will be dismissed by a judgment simultaneously filed herewith.

Petitioner's motion also requests that the court grant a certificate of appealability. Under 28 U.S.C. § 2253(c)(2), the Court must determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Sixth Circuit Court of Appeals disapproves of the issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F. 3d 466 (6th Cir. 2001). The District Court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Id.* at 467. Each issue must be considered under the standard set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000). *Id.* Under *Slack*, to warrant a grant of the certificate, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."

After reviewing each of Petitioner's claims, the Court finds that reasonable jurists could not conclude that any of those claims is adequate to deserve further review. Because Petitioner has failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue.

IT IS SO ORDERED.

ENTER:

s/ Leon Jordan

United States District Judge